

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 02-CR-206

USCA 04-1003

-vs-

KENNETH HACKBARTH,

Defendant.

ORDER

The Court ordered the parties in the above captioned case to submit position statements pursuant to *U.S. v. Paladino*, 401 F.3d 471 (7th Cir. 2005).

The Court has read those position statements and the sentencing transcript and recent filings and responds to the request from the Circuit Court of Appeals as follows. If the sentencing guidelines had been merely advisory the Court would have imposed the same sentence.

The Court is now free to disagree with the range established by the sentencing guidelines if that disagreement is reasonably rooted in the factors contained in 18 U.S.C. § 3553(a), but consideration of those factors would lead to the same result. A just sentence requires that emphasis be placed on factors (2)(A)(B)(C) of § 3553(a).

In addition, in assessing the facts under § 3553(a)(1), the egregious “nature and circumstances of the offense” outweigh consideration of the “history and characteristics of the defendant.”

Dated at Milwaukee, Wisconsin, this 24th day of August, 2005.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge